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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,998	11/21/2003	Matthew Hayduk	034017R006	7659
441	7590	05/06/2005	EXAMINER	
SMITH, GAMBRELL & RUSSELL, LLP 1850 M STREET, N.W., SUITE 800 WASHINGTON, DC 20036			NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/717,998	HAYDUK, MATTHEW
Examiner	Art Unit	
Frederick C. Nicolas	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 02 February 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-43, 45 and 46 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-3, 6, 16, 17, 19-22, 28, 31-33, 36-43, 45 and 46 is/are rejected.

7)  Claim(s) 5, 8-12, 14-18, 23-27, 30, 32, 34 and 35 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/21/2004.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments, see pages 11-14, filed 2/2/2005, with respect to claims 1-3,6,16-17,19-22,28,31-33,36-46 have been fully considered and are persuasive. The rejection of claims 1-3,6,16-17,19-22,28,31-33,36-46 have been withdrawn.

### ***Claim Objections***

2. Claim 8 is objected to because of the following informalities: in claim 8, line 1, the claimed limitation "the outlet end" appears to lack antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4,6-7,13,19-22,28-29,31,33,40-43,45-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Vork 4,173,418.

Vork discloses a dispenser device as seen in Figure 1, which comprises a dispenser housing (10), the dispenser housing having a body portion defining a mixing module reception area (27), a mixing module positioner (18) adjustably supported by the dispenser housing between a mixing module hold position and a mixing module access position as seen in Figures 1 and 3, a finger releasable locking device (16) which, when in a locking mode, locks the mixing module positioner in the hold position

as seen in Figure 3, and when in a release mode provides for positioner adjustment to the access position as seen in Figure 1, a pivotable door (12) pivotably supported by the dispenser body, the locking device is a toggle clamp as seen in Figure 1, wherein the latch has an adjustable contact member (col. 2, ll. 11-18). The device shown by Sperry et al. will perform the method recited in claims 40-43,45-46 during normal operational use of the device.

5. Claims 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Cherfane 5,180,082.

Cherfane discloses a dispenser as seen in Figure 1, which comprises a dispenser housing (36) having a chemical inlet section and a chemical outlet section (col. 6, ll. 54-68 onto col. 7, ll. 1-10), a closure device (302) dimensioned for contact with a mixing module (14) positioned to receive chemical from the chemical outlet section of the dispenser housing, and wherein the closure device is pivotable between a mixing module hold position and a mixing module access position (col. 9, ll. 12-62).

***Allowable Subject Matter***

6. Claims 5,8-12,14-18,23-27,30,32,34-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments filed 2/2/2005 have been fully considered but are moot in view of the new ground(s) of rejection.

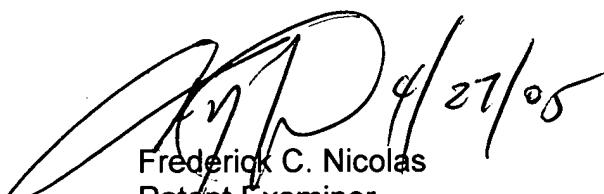
***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y Mar, can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
April 27, 2005



4/27/05  
Frederick C. Nicolas  
Patent Examiner  
Art Unit 3754